

(1975) 12 CAL CK 0027

Calcutta High Court

Case No: Appeal under Clause 15 of Letters Patent No. 96 of 1974

Renukana Mookerjee

APPELLANT

Vs

Bhabani Chatterjee

RESPONDENT

Date of Decision: Dec. 19, 1975

Acts Referred:

- Transfer of Property Act, 1882 - Section 106

Citation: (1976) 1 ILR (Cal) 299

Hon'ble Judges: S.K. Bhattacharyya, J; Jonah, J

Bench: Division Bench

Advocate: M.N. Ghose and S.P. Ghose, for the Appellant; Ranjit Banerjee, P.K. Chowdhury and Ajit Kumar Bose, for the Respondent

Judgement

S.K. Bhattacharyya, J.

The appeal by the tenants-Defendants under Clause 15 of the Letters Patent is directed against the judgment passed by M.M. Dutt J. in S.A. No. 714 of 1970 affirming two concurrent decisions whereby the Appellants were directed to be evicted from the premises in dispute.

2. The only point pressed by Mr. Manindra Nath Ghose, the learned Advocate for the Appellants, is that the notice to quit was not legally valid and reasonably sufficient and the tenancy of the Defendants was not terminated thereby.

3. Facts necessary for the purpose of determination of this point may briefly be stated. The premises in suit comprising 58/4A Raja Dinendra Street and 242 Vivekananda Road/Calcutta, formerly belonged to one Kumud Ranjan Banerjee under whom the Appellant's predecessor Madan Mohan Mukherjee was the original tenant. Madan Mohan took lease of the aforesaid premises from Kumud Ranjan at a monthly rental of Rs. 300 payable according to English calendar month under a deed of lease dated January 8, 1947, in "accordance with the terms of which the lease was to commence with effect from January 1, 1947. During his life-time Kumud

Ranjan filed a suit for ejectment against Madan Mohan, being T.S. No. 85 of 1951 in the Sixth Court of the Subordinate Judge at Alipore and the suit was dismissed on the ground of invalidity and insufficiency of the notice. An appeal against the said decision proved infructuous insofar as the claim for ejectment was concerned. In his above decision, the learned Subordinate Judge came to the finding that the month of the tenancy was either from the second day of the month to the first day of the following month or from the ninth day of the month to the eighth day of the following month and as the notice in that suit did not require the Defendants to quit and vacate with the expiry of the month of tenancy mentioned above, the suit was dismissed. In the disputed premises, there is a school known as Manicktolla High School, which was set up as a tenant by the Defendant's predecessor in the earlier suit, but this plea was negatived by the Court and Mr. Ghose appearing for the Appellants did not press this point any further. After the appeal was disposed of on April 25, 1958, Kumud Ranjan transferred the property in favour of the present Respondent No. 1 sometime in June 1959. Madan Mohan thereafter attorned in favour of the present Plaintiff-Respondent and paid rents to her. On January 15, 1963, Madan Mohan, the original tenant, died and on March 11, 1967, the Plaintiff-Respondent instituted the suit, out of which the present appeal arises for ejectment of the legal representatives of Madan Mohan, from the suit premises after serving a notice to quit on the Defendants-Appellants on February 24, 1966. The said notice to quit after reciting the above facts and also after referring to the finding of the learned Subordinate Judge in T.S. No. 85 of 1954 of the Sixth Court of the Subordinate Judge at Alipore alleged that the Defendants were defaulters in making payment of rents to the Plaintiff and in making invalid deposits of the same since January 1963. The notice, accordingly, directed the termination of the tenancy of these persons with the expiry of the last day of your month of tenancy which would expire next after one month from the receipt of this notice

and further directed them to vacate and deliver up physical possession of the disputed premises to the Plaintiff. As the Appellants failed or neglected to comply, the present suit was instituted.

4. The Defendants-Appellants contested the suit with a joint written statement and set up a number of pleas, which were all negatived by all the Courts. Hence, this appeal under Clause 15 of the Letters Patent.

5. Mr. Ghose appearing for the Appellants mainly contends that the above notice to quit, which has been marked Ex. 9 series, is not legally valid and reasonably sufficient to terminate the tenancy of the Defendants inasmuch as the commencement of the tenancy or the date on which it is to expire has not been specifically mentioned. It was further contended by Mr. Ghose that the notice was bad inasmuch as it was not addressed to all the tenants. Mr. Ranjit 1 Kr. Banerjee, learned Advocate appearing for the Plaintiff-Respondent, joined issue with Mr.

Ghose on both these points. Mr. Ghose in support of his contention relied upon a decision of a Division Bench of this Court in the case of Mozam Shaikh v. Annada Prasad 46 C.W.N. 366. That was a suit in respect of a small plot of land in a bazar area in respect of which the tenant Defendant was in possession from before the date when a kabuliyat came to be executed on Falgoon 26, 1205 B.S. corresponding to March 9, 1899. The notice to quit required the tenant to quit and vacate by Chaitra 30, 1343 B.S. In allowing the appeal their Lordships held that it was for the Plaintiff in a suit for ejectment to prove that the notice in question legally determined the lease and in order to establish that, he must show that the notice served upon the tenant expired either with the end of the year of tenancy or with the end of the month of the tenancy and as there was no evidence to show when the tenancy commenced, the Plaintiff's suit was dismissed. This decision in our view does not substantially support Mr. Ghose's contention. It is no doubt true that, in any suit for ejectment based upon a notice to quit, it is for the Plaintiff to establish that the notice terminating the tenancy must end with the expiry of the month or the year of the tenancy. In the instant case, the notice required the tenant to quit and vacate

with the expiry of the last day of your month of tenancy which would expire next after one month from the receipt of this notice.

It has been pointed out by Woodfall in his treatise on Landlord and Tenancy (26th ed., vol. I, p. 998, Article 2170) that "where it is unknown and cannot be ascertained or proved at what time of the year the tenancy actually commenced, the notice may validly be to quit on a specified day then next, or at the expiration of the current year of your tenancy which shall expire next after the end of one half year from the service of this notice". The learned author, however, pointed out that the general words used must be clear in their intent and this view is also quoted with approval by Mulla in his Transfer of Property Act (p. 670, 5th ed., 1956) in the following words:

It is usual after mentioning the date of the anniversary of the tenancy to add in the alternative some such general words as at the end of the year of the tenancy which will expire next after the end of one half year from the date of the service of this notice.

6. In the case of [Jatindra Nath Vs. Malai Ram Show](#), a learned Single Judge of this Court held that the demand for possession in the alternative form was perfectly valid and well recognised in law and in discussing the principle applicable to notice to quit, P.N. Mookerjee J. referred to a series of English rulings as also other cases of our country and repelled the contention of the learned Advocate for the Appellants that the notice insofar as it demands possession "at the end of a month of your tenancy which would expire next after 15 days from the receipt of this notice" was invalid, insufficient and vague and therefore, ineffective in law to determine the tenancy.

7. The notice in that case required the tenancy

to vacate and deliver up possession of the said two rooms with the end of July 31, 1945, or at the end of a month of your tenancy which would expire next after fifteen days from the receipt of this notice.

In agreeing with the above cited passage in Mulla, the learned Judge pointed out that there was nothing either in principle or in authorities which runs counter to the suggestion of the learned author and he was accordingly inclined to accept the same and repelled the argument of the learned Advocate of the Appellants on that score. A similar view was taken by another learned Single Judge of this Court in the case of Durgarani Devi v. Mohiuddin and Ors. 86 C.L.J. 198. The notice in that suit on the Original Side of this Court required the tenant to vacate and deliver up peaceful possession of the divided portion of the suit premises on the expiry of a month of his tenancy which was to expire next after the end of one month from the service of the said notice. The learned author here quoted Mulla's above-cited passage and after referring to the Privy Council decision in the case of Harihar Banerji v. Ramsashi 45 I.A. 222 held that the notice to quit in that case was good notice and effectively terminated the tenancy of the Defendant as from April 1946.

8. We may here appropriately refer to three decisions of the Allahabad High Court : [Pahlad Das Vs. Ganga Saran and Others](#), , [Pahlad Das Vs. Ganga Saran and Another](#), and [Bhagwan Sri Krishenji Maharaj Virajman Mandir, Khanpur Vs. Chuttan Lal](#), . The case of [Pahlad Das Vs. Ganga Saran and Another](#), is a Letters Patent Appeal from the decision in the case as in [Pahlad Das Vs. Ganga Saran and Others](#), . In the first case, notices were issued to the tenants in the alternative form requiring them to vacate on a particular day or a date on which the Defendant considered that the month of his tenancy expired. In the last cited case, the notice required the tenant to quit and vacate on the corresponding date on which the tenant thought his tenancy commenced and notices in all these cases were accepted as valid notices u/s 106 of the Transfer of Property Act.

9. It is, therefore, clear from a discussion of the authorities referred to above that a notice either in the alternative form or in a form requiring the tenant to quit at the end of the year or the end of the month of the tenancy which was due to expire next from the date of service of notice was a perfectly valid notice within the meaning of Section 106 of the Transfer of Property Act and such a notice could effectively terminate the tenancy of the Defendant. The decision in Mozam Shaikh v. Annada Prasad (Supra) relied on by Mr. Ghose, in our view, does not militate against the principle mentioned above. In the circumstances of that case, although the notice was accepted as a valid notice by their Lordship, the suit was unsuccessful on the ground that there was no evidence to show when the year or the month of the tenancy commenced.

10. In the instant case, the landlord had set out the full circumstances about the origin of the tenancy, earlier suit between the landlord and the tenant and the decision of the Court in the earlier ejectment suit creating an uncertain and confusing situation. In such circumstances, the landlord after setting out the facts had called upon the tenant to vacate in the manner indicated above. It is well-settled that the test of sufficiency of a notice to quit is not what it would mean to a stranger ignorant of all the facts and circumstances touching the holding, but what it would mean, to tenants presumably conversant with all the facts : Harihar Banerji v. Ramsashi (Supra). Accordingly, we hold that the notice in the instant case is a valid notice that effectively determined the tenancy of the Defendant and this contention of Mr. Ghose must therefore be overruled.

11. Another objection canvassed by Mr. Ghose was that the notice was not addressed to all the joint tenants. Undoubtedly the Appellants were joint tenants and if the notice was drawn up and addressed to all of them, mere non-service of notice on some of the joint tenants, would not render the notices defective. It is contended on behalf of the Appellants that no such persons existed as were mentioned against the Defendants Nos. 4 and 5, a point which was not specifically taken in the defence nor was it canvassed before the Court of first instance or the first appellate Court. The Plaintiff in para. 8 of her plaint had categorically stated that Madam Mohan Mukherjee died on or about January 15, 1963, leaving behind the Defendants Nos. 1 to 7 as his heirs and legal representatives to succeed to his estate, including the right of his tenancy in the demised premises. The Defendants in para. 9 of the written statement admitted the death of their predecessor Madan Mohan Mukherjee and their succession to the estate left by him, but did not specifically mention nor did they take any plea that the Defendants Nos. 4 and 5 were not the daughters of Madan Mohan. Admittedly, Madan Mohan left his widow, two sons and four daughters, who are all living in the same residence. In the circumstances, the failure on the part of the Defendants to disclose the names of the two daughters of Madan Mohan assuming them not to have been correctly described in the plaint would by the principle of non-traverse be sufficient to clinch of issue and Mr. Ghose cannot now in this late stage be heard to contend that two of the daughters of Madan Mohan have not been made parties to the suit. No other objection has been pressed. In the result, therefore, the appeal fails and is, accordingly, dismissed with costs. The judgment and decree of the Courts below are affirmed. In the circumstances set out we allow the Defendants-Appellants time till March 31, 1976, to vacate on condition that the Appellants continue to deposit an amount equivalent to rent month by month in accordance with English calendar in the trial Court by the 15th of each succeeding month, first of such deposit is to be made by January 15, 1976. The Appellants should also deposit the cost due under all the decrees within that period, if not already deposited. In default of any of these conditions, the decree will become executable at once.
Janah J.

12. I agree.